

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548**

50938

FILE: B-183147

DATE: July 23, 1975

MATTER OF: Cal-Chem Cleaning Co., Inc.

97345

DIGEST:

Where contracting officer requires preaward survey of bidder who had been determined nonresponsible twice before in the same year for similar contracts, and survey personnel recommended no award because of unsatisfactory ratings in 3 of 10 areas surveyed, contracting officer may rely on the results of the preaward survey to make his finding of nonresponsibility, and such findings will not be upset by our Office absent a convincing showing of bad faith or lack of a reasonable basis for the findings.

On September 16, 1974, the Naval Supply Center, Oakland, California, issued request for proposals (RFP) No. N00228-75-R-3088 for cleaning and painting high pressure air flasks and missile manifolds on the nuclear submarine U.S.S. John Marshall. The Navy conducted negotiations with three firms in the competitive range between October 29, 1974, and November 6, 1974. Upon receipt of best and final offers, Cal-Chem Cleaning Co., Inc. (Cal-Chem) had submitted the lowest offer.

Because Cal-Chem had received two negative preaward survey reports within the preceding year on similar procurements, the Navy requested the Defense Contract Administration Service District (DCASD), Pasadena, California, to survey Cal-Chem in 10 areas, including production capability, financial capability, and ability to meet the required schedule. In the three areas mentioned, the survey team found Cal-Chem to be unsatisfactory and recommended that no award be made to it. Under Armed Services Procurement Regulation (ASPR) § 1-705.4(c)(iv) (1974 ed.) the Navy did not request the Small Business Administration to certify Cal-Chem as competent to perform the contract, because delay would affect the overhaul schedules of other nuclear submarines and cost the Government approximately \$10,000 per day for "stand by" and \$1,800 per day if undocking and redocking were required. Consequently, the contract was awarded to Brown-Ferris Industries (BFI), the next lowest responsible bidder, on November 27, 1974.

By a letter dated January 24, 1975, the Navy informed Cal-Chem that it had not been awarded the contract (even though it offered the lowest price), because of the negative preaward survey. By letter to the contracting officer dated January 29, 1975, Cal-Chem protested the award of the contract to BFI.

Cal-Chem contended that, even though it met all of the general requirements in the areas listed as unsatisfactory in the preaward survey, the team conducting the preaward survey had preconceived a negative evaluation as evidenced by the team's very perfunctory manner employed in conducting the survey. Additionally, Cal-Chem contended that it had been denied previous similar contracts, even though it was the low bidder, and that despite repeated requests for more definite reasons as to their nonresponsibility, the Navy continually replies with vague generalities concerning such matters as "Production Capability," "Financial Capability," and "Ability to Meet Required Schedule."

By letter of January 31, 1975, Cal-Chem formally protested to our Office the Navy's action in awarding the contract to BFI, reiterating the allegations contained in Cal-Chem's letter of January 29, 1975, to the agency. For the reasons that follow the protest is denied.

Regarding the Navy's failure to explain the criteria by which it determined Cal-Chem to be nonresponsible, the Navy replied to Cal-Chem's letter of January 29, 1975, and set out the reasons for the negative findings in the areas of "Production Capability," "Ability to meet required schedule," and "Financial Capability." The letter stated that the preaward survey personnel found Cal-Chem to have neither satisfactory "Production Capability," nor "Ability to meet the required schedule," primarily because Cal-Chem did not demonstrate its ability to organize, plan, and control all the resources that were necessary to support completion of the project. The narrative supplement to the preaward survey report stated:

"A realistic production plan could not be made at the time of the survey. The production plan submitted by contractor was incomplete and raised question as to contractor's projected personnel requirement. His plan was not documented by man-hours, and it would appear that by 12 Dec 74 his man-hour requirements would increase above his seven-man, two-shift projection. Based on the above inadequate management controls, * * * and absence of adequate preproduction planning leads the survey

team to the conclusion that bidder could not meet the required delivery schedule of this RFP."

Second, the preaward survey personnel concluded that Cal-Chem had only one person to supervise the two 12-hour shifts contemplated by the Navy. Third, Cal-Chem seemed to be unaware of many requirements of the RFP, notably the requirement to cut the strip seals prior to removing the flask heads. Also, while the contract called for NAVSEA approved procedures, Cal-Chem did not show precisely what methods it intended to use or that the methods were NAVSEA approved. Finally, Cal-Chem could not produce evidence of past production on a similarly complex item; the instant requirements being more complex because the work was to be performed on board ship, required chemical cleaning of flask interiors, and required the fill and drain method of painting flask interiors.

Regarding Cal-Chem's "financial capabilities," the preaward survey team generally concluded that Cal-Chem did not have the financial strength to meet the 60-day completion schedule. More specifically, however, the survey team continually requested, but received neither a July 31, 1974, financial statement nor a current financial statement from Cal-Chem.

With respect to the attitude of preaward survey personnel, the Navy denies that there was any partiality shown by the team members. Furthermore, the Navy notes that, on each of the last two preaward surveys conducted at Cal-Chem's facility, the survey team was accompanied by a representative of the contracting officer. In the two instances noted, the Navy's buyer reported that an impartial review of Cal-Chem's capabilities had been conducted.

We have held consistently that the contracting officer must determine whether a prospective contractor is "responsible" for purposes of that particular procurement. 51 Comp. Gen. 439, 443 (1972); *id.* 703, 709; 45 Comp. Gen. 4 (1965); ASPR § 1-902 and 1-904.1 (1974 ed.). To be "responsible," a prospective contractor must show that it will be able to comply with the proposed or required delivery schedule, and have a satisfactory record of performance and integrity. ASPR § 1-903.1 (1974 ed.) The contractor must have adequate financial resources, the necessary organization, experience, operational controls and technical skills, and the necessary production, construction, and technical equipment and facilities, or the ability to obtain them. Cal-Chem Cleaning Company, Incorporated, B-179723, March 12, 1974; ASPR § 1-903.2 (1974 ed.). Our Office does not independently determine a

bidder's "responsibility" to perform contracts. Because reasonable men may well disagree as to a company's capability to perform a particular contract, our policy is to accept the contracting officer's negative "responsibility" determination, unless the record shows that the contracting officer determined the "responsibility" issue either in bad faith or without a reasonable basis. 49 Comp. Gen. 553 (1970), 37 Comp. Gen. 430 (1957); RIOCAR, B-180361, May 23, 1974. In determining a bidder's ability to perform a contract, the contracting officer is vested with a considerable degree of discretion, 51 Comp. Gen. 703, 709 (1972); 43 Comp. Gen. 228, 230 (1963), including the discretion to rely on the results of an adverse preaward survey. B-179723, supra; ASPR § 1-905.4(a) (1974 ed.)

We have carefully reviewed the preaward survey of Cal-Chem and have concluded that the contracting officer had a reasonable basis to support his finding that Cal-Chem was "nonresponsible" for the instant procurement. We note, however, that the determination of the contracting officer is valid only regarding this procurement. In the event that Cal-Chem is eligible for a subsequent award on a procurement by the Naval Supply Center or any other agency Cal-Chem's responsibility would have to be determined on the basis of its capabilities at that time. 43 Comp. Gen. 228, 331 (1963).

In support of Cal-Chem's contention that the preaward survey team was biased in favor of a larger contractor, Cal-Chem has presented no evidence of such bias, nor does our independent examination of the preaward survey report reveal any such bias. Accordingly, we find no merit in Cal-Chem's contention that the "no award" recommendation resulted from bias on the part of the preaward survey team.


Deputy Comptroller General
of the United States